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Discrimination against migrants - migrant women: in search of remedies

Contribution by the Special Rapporteur on the human rights of migrants

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SUMMARY

At its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/44 entitled "Human rights of migrants", in which it appointed a special rapporteur on those rights. The task before the Special Rapporteur is to achieve effective respect for the human rights of as many categories of migrants as possible, wherever they may be, including places of detention, transfer and resettlement in return areas for undocumented migrants.

One step is to contribute to the work of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Another is to take note of the numerous cases of discrimination and violence against women migrants.

This document starts with the observation that very few cases of such discrimination and violence are reported and even fewer are the subject of a formal complaint. This would point to a de facto denial of remedies available to non-nationals, and at the same time obstructs any possibility of dialogue or policies that could counter such practices. Briefly, it may be said that the lack of appropriate procedures means that there is little reporting of cases and that the absence of reporting in turn makes it difficult to take the necessary measures to ensure that cases are reported.

This denial of remedies has serious effects, particularly for migrant women belonging to minorities who, when they are questioned or detained during transfer or at their destination, suffer violations of their rights. This violence, which may be described as gender-specific, in addition to harming the women concerned often remains unpunished. As a result, the lack of reporting helps to perpetuate patterns of female subordination and constitutes an act of discrimination by omission, which needs to be corrected. This will have a crucial effect on the conditions in which migrant women are resettled if and when they return home (resolution 1999/44, para. 3).

In view of the prevailing lack of protection for the rights of this segment of migrant populations, there is a need to discuss the concepts contained in human rights instruments, especially those relating to the status of migrants and migrant workers and to violence against migrant women and girls, together with their implications for the responsibilities of States. A further question is whether the forums available for intersectoral dialogue, in which the migrants themselves are involved, offer viable opportunities for seeking remedies for the unprotected situation of this large segment of the world's population.

This document gives some suggestions on how to prevent discrimination and violence against women migrants, by improving the channels by which such practices can be corrected. One important means of achieving this is to allow migrants the opportunity to communicate what they experience before, during and after their transfer. Another is empowering them to do that by making their views known in the forums where decisions are made specifically with respect to migration policies (resolution 1999/44, para. 6).

On the basis of that discussion, the means are assessed of ensuring that such violence, and the discrimination implicit in the absence of available procedures for documenting it, does

not have the effect of perpetuating women's subordination in their societies of origin, transit, destination and possible return. A central issue in this debate refers to the root causes of the under-reporting* of these violations. This raises the issue of the common origin of violence against women, discrimination and intolerance. Because of the marginalized status of women migrants, especially those belonging to minorities, these causes are a determining factor in the search for remedies and in efforts to build a society that respects human rights.

The final section contains some recommendations for the elaboration of a strategy for remedying violations of the human rights of migrants - women migrants, and in particular the many forms of discrimination to which they are exposed. Opportunities for dialogue are suggested as being an important means for enabling migrants and their organizations to make themselves heard. This is seen as a strategy for overcoming the vicious cycle of victimization by recognizing the ability of migrants to defend their own rights.

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* By under-reporting is meant the absence of formal complaints against acts violating the human rights of migrant women and the omission of such acts from their testimonies regarding migration. In everyday terms under-reporting is equivalent to a lack of information.

Introduction

"One activity which should form part of the preparation for the World Conference is to make as precise a diagnosis as possible of what constitutes acts of racism. We can do this with the assistance of the Committee on the Elimination of Racial Discrimination by making an inventory of the specific forms that racism takes in society, by drawing up profiles of the victims and racist hate organizations, and by assessing the reaction of public opinion. It will also be necessary to look closely at new and emerging forms of racism, xenophobia and related intolerance, and the difficulties victims have in obtaining adequate recourse against these phenomena ... Another phenomenon which must receive adequate attention is the situation of migrants whose numbers are increasing all the time The phenomenon of large-scale migration has often been accompanied by increased instances of racism and xenophobia."[1]

Mary Robinson,
High Commissioner for Human Rights

1. Commission on Human Rights resolution 1999/44, which defines the mandate of the Special Rapporteur on the human rights of migrants, states that she should contribute to the work of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The resolution further stipulates that in order to overcome the obstacles to full protection for migrants the Special Rapporteur should "request and receive information from all relevant sources, including migrants themselves" and "formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur". The Special Rapporteur should also "take into account a gender perspective when requesting and analysing information, as well as ... give special attention to the occurrence of multiple discrimination and violence against migrant women".

2. Pursuant to that resolution, the Special Rapporteur began her work by requesting States, and intergovernmental, international and non-governmental organizations to provide her with full information of relevance to her mandate. As a result of this request, the Office of the High Commissioner has received information from various sources that is being analysed and that will be added to through a broader appeal, aimed especially at obtaining information from the migrants themselves and their organizations.

3. This document therefore focuses on the consequences of one of the forms of discrimination that migrants are often subjected to, namely the de facto denial of remedies available to non-nationals. Such discrimination by omission particularly affects migrant women belonging to minorities who, when questioned or detained in the course of transit or at their destination, are subjected to gender-specific violence. Regardless of who commits the violence, such discrimination occurs because States fail to make remedies available to these women; the lack of remedies makes it impossible for violations to be reported and, therefore, for appropriate remedial measures to be taken. Commission on Human Rights resolution 1997/13 on women migrant workers has already drawn attention to this aspect.

4. The under-reporting of this type of violation aggrevates the harm done to the victims, i.e. the migrant women, and perpetuates patterns of female subordination, thus contravening international provisions on women's rights. This under-reporting is recognized by several

sources in the field. It concerns women who belong to national minorities or women who do not speak the language of the country of transit or destination. Fragmentary information on the subject has been supplied by migrant women themselves or by their organizations, and by organizations present in frontier areas, particularly church groups. The consequences for individuals, families and communities of acts of violence against migrant women have a decisive impact if and when the process of resettling migrant women in their places of origin is undertaken.

5. Acts of violence against women are committed in different circumstances: in the home, in the community or at the hands of State institutions. The Special Rapporteur wishes to highlight the special case of migrant women who cross borders between countries or who are in transit through countries of which they are not nationals or whose official language they do not speak, and who are called in for questioning or possibly detained in a holding centre or other facility for migrants, only perhaps to be sent back to the nearest frontier or to their country of origin.

6. The document is divided into three parts. The first part, on the human rights of migrants, comments on the provisions in international instruments that concern migrants' rights, in the light of an analysis of some of the categories of migrants that are most exposed to rights violations. Particular reference is made here to the definition of "migrant" used by the Special Rapporteur. Part II, material for discussion, looks at the key facets of the problem and the conditions in which migrants' rights are violated. In the last part, conclusions and recommendations, the Special Rapporteur highlights salient points of the discussion and outlines some recommendations.

I. THE HUMAN RIGHTS OF MIGRANTS - MIGRANT WOMEN

A. Consideration by the international community

7. Several forums have drawn attention to the rights of migrants. In addition to the initiative of the Commission on Human Rights and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 (part II, paras. 33-35), the Programme of Action of the Cairo International Conference on Population and Development (Chap. X), the Programme of Action of the Copenhagen World Summit for Social Development (Chap. III) and the Platform for Action of the Fourth World Conference on Women, held in Beijing, (chap. IV. D) devote special attention to the subject of the human rights of migrants.

8. At the same time, the international community's interest in and concern for the protection of women's rights has been reflected in the Mexico (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995) conferences. It has also been reiterated in the United Nations declaration of 1975 as International Women's Year, followed by the United Nations Decade for Women (1976-1985) and the adoption by the General Assembly in resolution 54/4 of 6 October 1999 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

9. The Commission on Human Rights for its part, implicitly recognizing the limitations of the expression "migrant workers", set up first the Intergovernmental Working Group of Experts on the human rights of migrants and, more recently, the post of Special Rapporteur on the human rights of migrants.

10. Many international human rights norms refer to States' obligations to protect women against gender-based violence (General Recommendation No. 19 adopted by the Committee on the Elimination of Discrimination Against Women at its eleventh session in 1992) and against discrimination (International Convention on the Elimination of All Forms of Discrimination against Women, article 6, in addition to those already mentioned). The international legislation of the International Labour Organization (ILO) on migrants' rights also includes the obligation of States to protect this group from discrimination. The notions involved are considered in more detail below.

B. Discrimination

11. The definition of discrimination is clear. It refers to:

> "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (Convention, art. 1 (1)).

12. In 1968 the General Assembly adopted the two terms - racism and racial discrimination - and agreed that the term "racism" extends beyond racial discrimination.[2]

C. Migrant workers

13. The broad spectrum of international migrations covers certain officially defined categories of migrant.[3] There are, for example, the definitions of migrant workers contained in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. There are also the ILO Conventions 97 (revised) of 1949 (41 ratifications) and 143 of 1975 (18 ratifications) on migration in abusive conditions and on the protection of equal opportunities and treatment for migrant workers.

14. In the instruments referred to or in the rules for their implementation various sub-categories are defined, such as asylum-seekers or persons in situations similar to those of refugees, as well as various specific categories of migrant workers (frontier workers, seasonal workers etc.). In article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the term "migrant worker" is defined as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national".

15. For the purposes of considering and strengthening the protection of the human rights of migrants, priority attention should also be given to migrants in irregular situations. The 1990

Convention definition provides for the rights of those who are to be or have been engaged in an activity. The human rights of undocumented migrants are also a cause for concern, as are the rights of victims of trafficking, regardless of their work situation.

16. There is also reason to be concerned with the rights of other groups or categories of persons who may not be covered by the definitions given above and who are exposed to discrimination or the denial of their rights. Such persons are particularly unprotected from the legal, social and political standpoint, in the places where they reside or through which they transit. The Special Rapporteur wishes to refer here especially to those internal migrants, victims of violence, armed conflict, natural disasters or social, economic or cultural breakdown, who move within or outside their own country and who according to the recent definition are known as "displaced persons in transit". This category of migrants is also without protection once they have crossed an international border.

17. Returning to the definition in the 1990 Convention it is worth pointing out that it covers undocumented workers, who enjoy certain rights recognized in part III (Human Rights of All Migrant Workers and Members of Their Families). Article 2, paragraph 2 of the Convention defines some specific categories of migrant workers, including frontier workers, seasonal workers, seafarers, workers on offshore installations, itinerant workers, project-tied workers, and self-employed workers. The definition in article 2 refers exclusively to migrant workers who are outside their own country. In this instrument, the rights of migrant women are taken to be the same as for any migrant worker or any member of a migrant worker's family or as provided for by national legislation in the "State of employment". Lastly, it may be recalled that the 1990 Convention has not received sufficient ratifications to enter into force.

D. The migrant

18. Since the general term "migrant" has not yet been specifically defined in international law or politics, we need to establish a working definition that will make it possible to recognize and deal with situations in which the human rights of these individuals are protected by a legal, social or political framework.

19. In international law there is no universally admitted generic or general legal concept of a migrant. It is often said that, by definition, many international migrants are not refugees and a considerable number of them are not migrant workers either. This is particularly true in the case of the many migrants without documents or in an irregular situation, including those that have been victims of trafficking in persons and who are the most exposed to potential or actual violations of their human rights.

20. In this regard there is a gap in international human rights jurisprudence. The virtually universal system for the protection of refugees allows for recognition and remedy of violations of their civil and political rights, above all when the lives and safety of the individuals concerned are so threatened that they feel compelled to flee their country. But there is no similar recognition of violations of economic, social and cultural rights, which can also be so serious as to force the persons to flee their place of origin, as in fact occurs with many migrants.

21. Often physical violence or other rights violations target persons who differ in colour, physical appearance, clothing, accent or religion from the majority in the host country, regardless of their legal status. The Special Rapporteur wishes to stress the fact that the profile of the victims and the nature of the abuses are not affected by whether those persons are refugees, documented immigrants, members of national minorities or undocumented migrants. The 1990 Convention aims to protect persons who are particularly at risk from xenophobic or nationalistic ideas and to ensure protection for some groups for which the ILO conventions provide no guarantee.

22. Consequently, in order to draft a human rights oriented definition of the term migrant, the first factor to consider is whether or not migrants' rights currently enjoy any form of legal, social or political protection. A preliminary proposal for a basic definition of migrants, taking into account their human rights, might include the following elements:

(a) Persons who are outside the territory of their State of nationality or citizenship and not subject to its legal protection, and are in the territory of another State;

(b) Persons who do not enjoy general legal recognition of the rights inherent in the status of refugee, permanent resident, naturalized citizen or other similar status granted by the host State;

(c) Persons who likewise do not enjoy general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other accords.

E. Migrant women and girls

23. Despite the fact that the 1990 Convention, in article 16, confers on migrant workers and members of their families the right to "effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions", some people have pointed out that the instrument does not deal with the vulnerability of women migrant workers, especially to prostitution and sexual abuse (see E/CN.4/1997/47).

24. The peculiar situation of women migrants has been recognized in the Beijing Platform for Action, paragraph 46, in the following terms:

> "The Platform for Action recognizes that women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or because of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and to their socio-economic status, including their living conditions in rural, isolated or impoverished areas. Additional barriers also exist for refugee women, other displaced women, including internally displaced women, as well as for immigrant women and migrant women, including women migrant workers. Many women are also particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women."

F. Victims of trafficking

25. Additionally, initiatives are under way for the preparation of the two Protocols to the United Nations Convention against Transnational Organized Crime, one on trafficking and the other on infiltration of persons across borders, which reflect the international community's determination to eradicate this practice. Trafficking and smuggling of persons are particularly reprehensible when the victims are women and children, although such practices frequently also involve adult male migrants. It is important to make clear that the purpose of this discussion is to deal with violations of the human rights of migrants - migrant women and to find remedies for them, and does not concern only victims of trafficking.

G. Domestic service

26. One of the categories exposed to the type of violation dealt with here is that of women domestic workers. The absence of remedies for non-nationals and the resulting lack of policies to prevent the violation of their rights are typical of this population group. There is abundant evidence of the large number of women who migrate in order to find work in domestic service. Information from the field, particularly from marginal and frontier communities, suggests that both physical and sexual abuse against these women and the absence of any complaints about such abuse to the competent authorities are basic features of such migration.

27. The Committee on the Elimination of Racial Discrimination has already reported on the ill-treatment of foreign workers, including women in domestic service, recognizing the seriousness of the problem and the insufficiency of available remedies (see A/50/18, paras. 566 and 567).

H. Violence against migrant women and girls

28. The physical and sexual abuse of migrant women during their transfer or in places of detention must be considered also as a specific form of violence against women. In accordance with the definition in the Convention, this violence includes "violence that is directed against a woman because she is a woman or that affects women disproportionately".[4]

29. According to article 2 of the Declaration on the Elimination of Violence against Women:

> "Violence against women shall be understood to encompass, but not be limited to, the following: (a) "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation."

30. The Special Rapporteur on violence against women, Mrs. Radhika Coomaraswamy, has also frequently mentioned the condition of women in domestic service and their vulnerability:

> "Factors such as isolation from one's community and family, sexism, racism and classism further exacerbate the conditions that lead to widespread violence against domestic servants and abuse at the hands of their employers within the walls of what has become both their home and their workplace." (E/CN.4/1996/53, para. 79)

Discrimination against migrants - women migrants

31. The aspect of particular interest, which, as we said, is typical of a form of discrimination against women who belong to minorities or do not speak the official language of the country they are in, is the absence of remedies available to non-nationals, particularly in the case of migrant women who have been the victims of sexual abuse. Therefore, in accordance with the areas identified in the Beijing Platform for Action, this type of violence against women and the discrimination resulting from the lack of procedures through which it may be reported and documented, should be considered primarily as a form of discrimination by State institutions. Its consequences, apart from the harm done to the victims, include the difficulty of devising any means of remedying or preventing it. In its resolution 1997/13, the Commission on Human Rights also highlights the violence to which this group of persons is often exposed.

32. The Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 19, describes the State's responsibility for this type of act as follows:

> "Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." (para. 9)

33. Acts of violence against migrant women and the absence of remedies available for formal complaints against such acts and their documentation also fall specifically within the scope of international provisions relating to conditions of detention and more concretely those relating to violence against detained women. [5]

> "Custodial violence against women is a widespread and troubling phenomenon. Abuse of power by government agents, usually police or military personnel, under non-transparent and highly unequal conditions, together with the impunity accorded to such agents, constitute the bases on which custodial violence ferments and grows." (E/CN.4/1995/42, para. 248)

34. Rape while in custody and other forms of sexual violence against undocumented women from minority groups, together with the fact that such violations are not reported, are considered here as a key phenomenon illustrating the common roots between violence against women and forms of discrimination and intolerance. Understanding those roots is considered by the Special Rapporteur to be fundamental, especially with a view to recommending appropriate remedies. The Special Rapporteur will return to this aspect in part II of this document.

I. Violence against migrant men and boys

35. The situation described above concerning violence, particularly sexual violence against migrant women in places of detention and the absence of available remedies as a form of discrimination, also affects migrant boys and to an indefinite extent also migrant men. Some of the reasons why this type of violation is not formally denounced in the case of women also apply in the case of migrant boys and men; others are specific to women. The consequences of this violence, and the consequences of the fact that they are not reported owing to a lack of remedies, are equally serious in the case of migrant boys and in the case of migrant men. In the same way as the lack of any record is an irremediable impediment when it comes to developing policies to protect the human rights of migrant women, the same limitations apply in the case of migrant boys and men whose rights have not been respected. The specific way these problems affect the migrant population needs to be analysed, perhaps on another occasion.

J. Gender-based acts of violence affecting migrant women

36. Various sources, which have to remain nameless owing to the circumstances in which they assist migrant women, as well as field observations of different origins, have described the harsh conditions in which women migrate everywhere in the world. The difficulties encountered by these women are considerable; many of them come from rural areas, move to towns locally or within the country and later cross international borders. Very often the border passage is made without the necessary papers. The lack of social support and protection networks and in many cases linguistic isolation make this sector of the migrant population particularly vulnerable.

37. Acts of physical, sexual and psychological violence in family, community and institutional circles, which frequently occur in the migrants' home setting, are followed by those of the private agents and corporate officials during such persons' transit across territories and frontiers. Sexual harassment and requests for sexual favours, in exchange for protection or permission to pass through frontiers and road blocks, appear frequently in the testimonies of women in transit in different parts of the world.

38. These acts, which violate the rights of women and constitute forms of gender-based persecution, are also committed by traffickers, smugglers and bosses. Whether in the case of private agents, corporate officials or authorities, the implications of lodging a complaint are more serious if the migrants are women (see E/CN.4/1999/68/Add.2), who do not speak the language of the authority they are dealing with and who are not equipped with the necessary papers, as is often the case.

K. Some effects of the absence of remedies available to non-nationals

39. One of the aspects which makes it difficult to lodge complaints against these acts is, as we pointed out earlier, the linguistic isolation in which many migrant women find themselves. When they are held for questioning and/or detained, this prevents them from communicating with the competent authorities. The notion that what has happened to them "is inevitable" and their ignorance of their rights are also decisive factors.

40. Another even more complex situation is the one where some authority is actually involved in the acts of violence against women. Attitudes based on racial prejudice and ignorance of the gender-specific situation of women migrants, on the part of border and corporate officials in charge of dealing with these persons, are also crucial:

> "In view of the social situation of persons who are potential victims of discrimination, the authorities must take steps to make them aware of, and provide them with information about, the existence and value of these remedies. Conditions governing access to remedies should also be simplified" (HR/GVA/WCR/SEM.1/2000/2).[6]

41. When there is no access to remedies on which to base complaints, these acts remain unpunished, as we have already pointed out, and the possibility of compensation, to the extent that any is available, disappears. This situation affects the individual involved, especially the image she has of herself and her level of self-esteem. It also affects any chance these women may have to establish relationships, on equal terms, with those around them and affects the way they are received in both destination and return communities. Last but not least, the absence of appropriate procedures signifies that there is a complete lack of information required for developing remedies and preventing new violations of rights.

42. The lack of records, especially considering that it amounts to a form of exclusion of those concerned, has a further negative effect by giving rise to attitudes whereby migrants, in this case migrant women, are looked upon only as victims. This problem is particularly acute when it comes to finding solutions for migrant women who originate from and will return eventually to traditional cultures and communities. The Special Rapporteur would like to draw attention to the fact that any effort to "normalize"[7] the migration issue, thus creating a climate propitious to the search for remedies to the violation of migrants' rights, is obstructed not only by racial prejudice and xenophobia, but also by the sort of "victim-related" outlook so common in assistance work.

II. MATERIAL FOR DISCUSSION

43. In article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, the States parties undertake to assure:

> "to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination".

44. The issue which the Special Rapporteur wishes to raise in the debate is the essential need to find remedies for discrimination against migrants. In the particular case in hand, it is a question of finding remedies to prevent these violations from being repeated and to prevent the ppersistence of discrimination against migrant women, which in addition reinforces the subordinate role attributed to women in society. In this case, discrimination consists in the unavailability of remedies which allow migrant women belonging to minorities to lodge

complaints about the violence to which they have been subjected. This absence of remedies, as we noted earlier, at the same time gives rise to a lack of records and hence to the impossibility of formulating remedial policies.

45. Regarding the real need to have access to information disaggregated according to sex[8] in order to be able to recommend and remedy, the Special Rapporteur on violence against women expresses the following view:

> "The situation of women can only be identified and improved where disaggregated statistical data and other information are available. Such information is particularly lacking for vulnerable groups, such as women victims of violence (domestic violence or violence perpetrated by their State of origin, for instance). One consequence of this absence of qualitative and quantitative information is the reduced effectiveness of programme implementation." (E/CN.4/1999/68/Add.2, para. 192)

46. On the subject of the lack of remedies in this case, we may quote the following extract from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173 of 9 December 1988, where it mentions the need for interpretation services:

> "Principle 14: A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest."

47. Clearly, though, the problem of lodging complaints against acts of violence in general, and acts of sexual violence in particular, committed by officials and/or private agents, both inside and outside places of detention, is not only one of language. The causes of the problem are deep rooted in the way many societies are organized and in the attitude of discrimination against women that prevails in those societies. The question of power or, in this case, the lack of power by migrant women, in relation to officials in places of detention is undoubtedly one contributory factor.

> "(...) Cases are cited in which the police have halted women's attempts to flee abusive domestic situations and to file formal complaints by returning women to their violent employers. Furthermore, even though there do exist mechanisms of criminal accountability, such as rape and assault statutes, cultural biases against believing women and tendencies to blame the victims of violence themselves often thwart attempts to transform reports into investigations, arrests or prosecutions." (E/CN.4/1996/53, para. 81)[9]

48. Another aspect, the consequences of which for the future of migrant women exposed to violence are crucial, is the problem of impunity. Its effects within the family, the community and society, and on a psychological level, are all important. Much emphasis has been laid on the importance for the individual and the community of the fact that acts that violate rights should be

socially penalized. In this particular case, impunity, both with respect to the violent act and to discrimination by omission, arising from the lack of remedies available to non-national migrant women, perpetuates a social situation whose foundations are contrary to human rights. On the level of society in general, this question of impunity raises the issue of the social dimension of reparation, known as the process of reconciliation.[10]

49. Despite the fact that full reparation in the case of violence against women, or in the case of discrimination arising from the lack of available complaint procedures, is practically impossible to the extent that such acts constitute an affront to human dignity, respect for the rule of law is undoubtedly an important factor in the lives of the individuals and the communities affected.

50. Enlarging on this last point, the Special Rapporteur wishes to emphasize that it is respect for the rule of law, as referred to above, which guarantees the right to speak for the individual and society. The denial of this right should then be seen as an immediate effect of the absence of remedies allowing free expression. Generally, however, the denial is related to social systems opposed to all equity, all justice and hence to all basic forms of democracy.[11] The immediate effect of the denial is to render impossible any type of dialogue which could further the necessary though insufficient search for remedies for acts already committed and which can help prevent future violations of migrants' human rights.

51. We referred above to the connection between the origins of violence against women and the origins of discrimination. It is worth noting that underlying these two scourges, i.e. violence against women and discrimination, is the difficulty for the social system, in particular one based on patriarchal and sociocentric values, to live with otherness. The difficulty inherent in the social system regarding otherness is echoed in the way the individuals produced by the social system are socialized and tend to perpetuate their own kind. This difficulty leads in more general terms to a tendency for the heteronomous social system[12] to repeat itself.

52. Denying migrant women who have been the victims of gender-based violence the right to speak is tantamount to condemning them to return to situations of physical, psychological and sexual abuse from which they could be escaping.[13] It again precludes the possibility of achieving explicit recognition of the fact that the social standard is based on the infinite universe of the speech of men and women, and that in a society of human rights this standard must be accepted as an overriding principle. In this sense, whatever remedies can be made available to migrant women, in addition to existing ones, to allow them to recover their speech, beyond their victimization, provide the key to remedying, as far as possible, the profound individual and collective effects of discrimination and those derived from violence and exclusion against women. Recovering these women's free expression is vital for the elaboration of any policies for the prevention of discrimination and violence against migrant women.

III. CONCLUSIONS

53. One of the main obstacles to remedying violations of the human rights of migrants consists in the lack of information regarding the type of violations, the places where they occur and their characteristics. The under-recording is greater to the extent that the migrants are more

marginal and to the extent that they have less power. The case of migrant women, especially those from language minorities, whether national or not, is one of the most extreme examples of such under-recording and one which requires the most urgent measures.

54. Owing to the way the phenomenon of migration has evolved in recent years, it is migrant women who more and more frequently move around within their countries of origin and outside them. The absence of remedies for non-nationals, particularly of interpretation services for women from language minorities who are held for questioning, detained or deported, presupposes a form of discrimination already condemned by international instruments, especially by the International Convention on the Elimination of All Forms of Discrimination. Such discrimination, moreover, in the case of the victims of different forms of violence against women, including sexual abuse, compounds the physical and emotional harm suffered by women exposed to it.

55. The consequences of impunity are particularly incompatible with any community based on the rule of law and a crucial aspect for any action to ensure the return of migrant women to their places of origin. This consideration is of particular relevance in the case of migrant women coming from traditional communities.

56. The obstacle to the full protection of the human rights of migrant women constituted by the lack of recording of the violence to which they are exposed is aggravated by the limitations on the definition of migrant employed in the relevant ratified instruments, and by the limitations which, particularly with respect to the vulnerability of migrant women to sexual violence and prostitution, are inherent in the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

57. If we assume that the category of women who are of rural origin and who suffer extreme marginalization - not only linguistic - is vast and constantly growing in whole regions of the world, then we are confronted with a phenomen of discrimination by omission, which is leaving what is estimated to be a significant number of migrant women each day deprived of means of expression. This denial of the right to speak, arising from the lack of available remedies to restore expression to migrant women, is a form of discrimination which in turn gives rise to a major obstacle, not only for the establishment of the rule of law, but also and even more so for the establishment of any system of rights.

58. The States themselves need to institute the systematic recording of conditions prevailing with respect to the entry, transit and, in the event, the return of migrants, and in particular the recording of any violations, before they can plan any migration policy which is respectful of the human rights of migrants-migrant women.

IV. RECOMMENDATIONS

A. General

59. A strategy on different levels of intervention, aimed at remedying the effects of and preventing violations of the human rights of migrants, including violence and discrimination

against women migrants, should be based on a perspective of gender equity, taking into account the transcultural implications - for the peoples of origin, transit, destination and return - of human migrations.

60. It is vitally important that the States and the international community should institute migrant hearings as a regular procedure, provided for in both domestic and international law, with multisectoral participation, including other migrants and their organizations, as a compulsory requirement in any proceedings involving the questioning or detention of migrants-migrant women. Such hearings should be held without any judicial implications regarding the migratory status of the migrants, in places of origin, transit, destination and return.

B. On a national level

61. States must:

(a) Establish penal sanctions against all perpetrators of acts of violence against migrant women, and not only with respect to trafficking;

(b) Provide interpretation services in places intended for the passage or detention of migrant women in conformity with the general recommendations;[14]

(c) Provide medical services including psychosocial care in places intended for the passage or detention of migrant women, in conformity with the general recommendations;

(d) Encourage and assist non-governmental organizations to provide these and other counselling services to migrant women in particular;[15]

(e) Undertake awareness campaigns based on the general recommendations, in places of origin, transit and destination of migrant women;

(f) Ensure that the training of officials includes guidance on dealing with migrants, based on an approach which takes account not only of the positive aspects of migrations but also of the ability of the migrants themselves to find remedies and to prevent violations of their rights;

(g) Ensure that measures taken on a national level for the return of migrant women to the countries concerned follow the terms of the general recommendations;

(h) Ensure that governmental and non-governmental organizations sectors base their migrant policies on non-restrictive criteria, thus allowing the possibility of identifying new categories of migrants whose rights have to be protected, such as internal migrants or displaced persons in transit.

C. On an international level

62. The international community must:

(a) Promote the competence of the Committee to act as provided in article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, in the event of complaints by migrant women or groups of migrant women;

(b) Promote the adoption of a broader concept of migrant in international instruments, to cover as many categories as possible, including displaced persons in transit;

(c) Take steps to promote technical cooperation with States wishing to incorporate the approach advocated in the general recommendations;

(d) Ensure that Governments affected by a common migratory phenomenon hold regular consultations with other Governments, which include due consideration for human rights;

(e) Encourage the competent United Nations bodies, in the formulation of recommendations and resolutions, to give expression to views which incorporate the positive aspects of migrations and particularly the ability of migrants themselves to find remedies and to prevent violations of their rights;

(f) Encourage direct dialogue between migrants and their organizations and the Governments of countries of origin, transit and destination, with a view to reflecting the ratification of international instruments in domestic legislation and in administrative policies and measures;

(g) Seek ways of overcoming reservations with regard to the rights of migrants related to differences between nationals and non-nationals, without prejudice to State sovereignty;

(h) Involve the specialized agencies of the system, including the International Labour Organization (ILO), and other organizations such as the International Organization for Migration (IOM), in combating the under-recording of the circumstances in which women migrate and especially of information provided by migrant women who have been affected by gender-based violence;

(i) Urge treaty bodies, such as the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination against Women (CEDAW), to draw up a general recommendation on migrant women[16] incorporating the views outlined in this document;

(j) Call on States to reflect the adoption of international standards in their administrative measures, providing for the training and awareness of frontier officials in line with the terms of the general recommendations;

(k) Promote the ratification of instruments and the creation of a culture of human rights and tolerance in educational programmes, especially in geographical areas most effected by migration, with emphasis on the positive aspects of human migrations;

(l) Ensure that whatever measures are provided internationally for the return of migrant women to their countries of origin are in conformity with the terms of the general recommendations.

D. For non-governmental organizations

63. Non-governmental organizations must:

(a) Cooperate with Governments and with the international community to implement services for the reception of migrants at frontiers, as advocated in the general recommendations;

(b) Cooperate technically to create facilities for documenting cases of gender-based persecution and discrimination due to the lack of remedies for non-nationals;

(c) Arrange for and expand, in accordance with the terms of the general recommendations, their own representation at frontier crossings and in areas of migration transit and destination, particularly where women migrants are involved;

(d) Ensure that policies for the strengthening of institutions should incorporate views which take account of the positive aspects of migrations and in particular of the ability of migrants themselves to find remedies and to prevent violations of their rights, through direct dialogue with Governments;

(e) Ensure that whatever measures they are planning within their geographical area of influence, which contemplate the return of migrant women to countries within that area, comply with the terms of the general recommendations.

Notes

[1] Opening speech at the Expert Seminar on remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in this field (Geneva, 6-18 February 2000).

[2] E/CN.4/1998/77/Add.1/para. 86.

[3] For other categories of migrants not dealt with here see, on refugees, the Convention and Protocol Relating to the Status of Refugees and, on internally displaced persons, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add. 2, annex).

[4] General Recommendation No. 19, para. 6, of the Committee on the Elimination of Racial Discrimination (HRI/GEN/1/Rev. 3).

[5] See E/CN.4/1999/68/Add.2 in this connection.

[6] Background paper prepared by the secretariat for the Expert Seminar on remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in this field (Geneva, 16-18 February 2000).

[7] By "normalize" we mean preparing inhabitants of the places of origin, transit, destination and return, and the institutions of those States, to succeed in coexisting with the phenomenon of migration subject to respect for human rights.

[8] See, for example, E/ECE/RW.2/2000/2, Annex II.

[9] The source from which this quotation is taken is Middle East Watch Women's Rights Project, *Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait*, New York, August 1992.

[10] The way in which reconciliation has been tackled by the people of South Africa, through public recognition of acts of racism by those who committed them, in the presence of the victims of those acts, stands as a fine example for the world.

[11] Including what is understood as democratic process.

[12] A heteronomous social system is one that identifies its origins not in the practical behaviour of men and women and in their discourse, but in entities outside itself. One example, though by no means the only one, of this type of society is religious society. The heteronomous society is also defined by opposition to the autonomous society, whose familiar historical form is democracy.

[13] Amnesty International: USA. Lost in the Labyrinth: Detention of Asylum Seekers, 30 September 1999, p. 60. In particular the case of women trying to evade the policy of birth control in China.

[14] See, for example, E/CN.4/1997/47, section III.D. Other measures such as those adopted by the Netherlands and Belgium to combat traffic in women should be considered to combat this phenomenon.

[15] See General Assembly resolution 54/138, para. 9.

[16] Ibid.